

ORIGINAL

(26)

4-11-02
SCIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE : CIVIL ACTION

V. : NO.: 1:01-CV-1064

JAMES UPDIKE, P.A., JOSEPH :
MATALONI, EDWARD O'BRIAN : (Judge Kane)
and DALE HAZLAK : Magistrate Judge Smyser)

FILED
HARRISBURG, PA

APR 10 2002

MARY E. D'ANDREA
Per
Deputy ClerkANSWER OF JAMES UPDYKE, P.A. TO THE MOTION OF PHAN HUE
FOR AN EXAMINATION PURSUANT TO F.R.C.P. 35(a)

James Updyke, P.A. ("Updyke") responds to the motion of Phan Hue ("Hue") for an order of examination pursuant to Federal Rule of Civil Procedure 35(a) as follows:

1. Hue has failed to establish a basis for an examination pursuant to Federal Rule of Civil Procedure 35(a). He has not asked for such an examination. Instead, he asks that this Court essentially appoint an expert for him. He requests that this Court select a doctor to examine his shoulder to establish his claim against Updyke and the other defendants in this case.

2. This fails to constitute the purpose of Federal Rule of Civil Procedure 35(a). Federal Rule of Civil Procedure 35(a) provides a remedy for a party who wishes to have another party examined by a physician of the party's choice. The rule requires that the party seeking the examination show good cause and specify the time, place and manner and scope of the examination and the person by whom it is to be made. The party seeking the examination has to pay for the examination. Here, Hue asks the Court to pay for it. He does not indicate who will perform the examination. He does not seek to examine the opposing party but asks that he be examined.

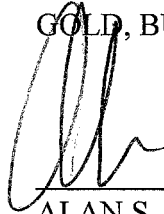
3. Hue attempts to misuse Federal Rule of Civil Procedure 35(a) to have the Court appoint an expert for him to testify at trial. No basis exists for the appointment of an expert for

Hue in this case.

4. Updyke incorporates by reference as if set forth herein in full his brief in opposition to the motion of Hue for a physical examination pursuant to Federal Rule of Civil Procedure 35(a).

GOLD, BUTKOVITZ & ROBINS, P.C.

BY:

A handwritten signature in black ink, appearing to be 'A. S. Gold', written over a horizontal line.

ALAN S. GOLD

Attorney for Defendant,
James Updyke, P.A.